Ng Kook Kin v Public Prosecutor

HIGH COURT (JOHOR BAHRU) — CRIMINAL REVISION NO 43–4–1994
ABDUL MALIK ISHAK J
22 DECEMBER 1994

Civil Procedure *— Jurisdiction — Magistrates' court — Offence under fisheries regulations — Whether only sessions court has jurisdiction to hear case — Lembaga Kemajuan Ikan Malaysia Act 1971 s 20*

Statutory Interpretation *— Construction of statutes — Literal approach — Plain meaning of words — Words in statute precise and unambiguous — Whether the word 'shall' is mandatory — Lembaga Kemajuan Ikan Malaysia Act 1971 s 20 — Fish Marketing Regulations 1973 reg 4A(3)*

Fisheries *— Licence — Import of fish without licence — Offender sentenced by magistrate — Proceeds of sale and motor van forfeited — Whether magistrates' court has the jurisdiction to hear case — Lembaga Kemajuan Ikan Malaysia Act 1971 s 20 — Fish Marketing Regulations 1973 reg 4A(3)*

The applicant in this case was charged in the magistrates' court under reg 4A(3) of the Peraturan-Peraturan Pemasaran Ikan 1973 (Fish Marketing Regulations 1973), punishable under the Lembaga Kemajuan Ikan Malaysia Act 1971 ('the Act'). The applicant pleaded guilty. The magistrate convicted and sentenced the applicant, and further ordered that the proceeds of sale of fish and his motor van be forfeited. However, the applicant later initiated a revision in the High Court regarding the legality of the order passed by the magistrate and the regularity of the proceedings in the magistrates' court. The applicant argued that it was the sessions court, and not the magistrates' court which had the jurisdiction to hear and dispose of the case. He relied on s 20 of the Act, which in effect provides that a sessions court in West Malaysia 'shall' have jurisdiction to try and to award full punishment for any offence under the Act. On the other hand, the prosecution argued that the magistrates' court had the jurisdiction on the ground that s 20 of the Act is couched permissively and not obligatorily.

Held, quashing the conviction and sentence, setting aside the orders for the forfeiture and ordering a transfer of the case to the sessions court:

(1) As the words in s 20 of the Act are precise and unambiguous, the court need not go any further than to expound them in their ordinary and natural sense. The words themselves alone best declare the intention of Parliment, and the court cannot import words into it or to repunctuate it to give it a different meaning.

(2) In this case, upon a plain reading of s 20 of the Act, only the sessions court is vested with the jurisdiction to hear and dispose of the applicant's case. This is because the word 'shall' appearing in s 20 reflects a measure of mandatoriness and the section empowers only the sessions court to award the full punishment for the offence thereunder.

[Bahasa Malaysia summary

Pemohon dalam kes ini telah didakwa di mahkamah majistret di bawah peraturan 4A(3) Peraturan-Peraturan Pemasaran Ikan 1973, yang boleh dihukum di bawah Akta Lembaga Kemajuan Ikan Malaysia 1971 ('Akta tersebut'). Pemohon telah mengaku salah. Lalu, majistret tersebut telah menyabit dan menjatuhkan hukuman terhadap pemohon, dan seterusnya memerintahkan supaya hasil jualan ikan serta van pemohon dilucuthakkan. Walau bagaimanapun, pemohon kemudiannya mengusulkan suatu penyemakan dalam Mahkamah Tinggi mengenai keesahan perintah yang telah diluluskan oleh majistret, dan juga sama ada prosiding mahkamah adalah mengikut aturan atau tidak. Pemohon menegaskan bahawa mahkamah yang mempunyai bidang kuasa untuk mendengar dan menyelesaikan kes ini ialah mahkamah sesyen, dan bukannya mahkamah majistret. Beliau bergantung pada s 20 Akta tersebut yang secara keseluruhannya menyatakan bahawa sesuatu mahkamah sesyen di Malaysia Barat 'adalah' mempunyai bidang kuasa untuk membicarakan sebarang kesalahan dan menjatuhkan hukuman penuh bagi sebarang kesalahan di bawah Akta tersebut. Sebaliknya, pihak pendakwa berhujah bahawa mahkamah majistret mempunyai bidang kuasa, berdasarkan alasan bahawa s 20 Akta tersebut adalah diungkap secara permisif dan bukan mewajibkan.

Diputuskan, membatalkan sabitan dan hukuman, mengetepikan perintah pelucuthakan, dan memerintahkan supaya kes dipindahkan ke mahkamah sesyen:

(1) Oleh kerana perkataan-perkataan dalam s 20 Akta tersebut adalah tepat dan tidak taksa, mahkamah hanya perlu mentafsirkan perkataan-perkataan tersebut mengikut ertikata mereka yang biasa dan lazim. Perkataan-perkataan tersebut dengan sendirinya menyatakan niat Parlimen, dan mahkamah tidak boleh memasukkan perkataan ke dalamnya atau membubuhkan tanda baca sendiri supaya memberikannya suatu makna yang berlainan.

(2) Dalam kes ini, dengan membaca s 20 Akta tersebut secara literal, hanya mahkamah sesyen yang diletakhakkan dengan bidang kuasa untuk mendengar dan menyelesaikan kes pemohon. Ini disebabkan perkataan 'adalah' yang terdapat di dalam s 20 mencerminkan unsur mandatori dan seksyen itu memberikuasa

kepada hanya mahkamah sesyen untuk menjatuhkan hukuman penuh bagi kesalahan di bawahnya.]

Notes

For cases on the jurisdiction of the magistrates' court, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2203–2209.

For cases on the construction of statutes, see 11 *Mallal's Digest* (4th Ed) paras 1308–1368; [1990] Mallal's Digest 1166; [1991] Mallal's Digest 1910; [1992] Mallal's Digest 1613–1624; [1993] Mallal's Digest 1250–1257.

For cases on fisheries licences, see 7 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 2223–2230.

Cases referred to

Cargo ex Argos, Gaudet v Brown (1873) LR 5 PC 134 (folld)
David v De Silva [1934] AC 106 (refd)
Duport Steels v Sirs [1980] 1 All ER 529; [1980] 1 WLR 142 (refd)
Khoo Kay Jin v PP [1964] MLJ 22 (distd)
Liew Min Poh v PP [1962] 3 MC 316 (distd)
Manchester Corp v Connolly [1970] 1 All ER 961; [1970] 2 WLR 746 (refd)
O'Connor v Issacs [1956] 2 QB 288; [1956] 2 All ER 417; [1956] 3 WLR 172 (refd)
PP v Kulasingam [1974] 2 MLJ 26 (refd)
PP v Lim Yoo Hock [1984] 1 MLJ 309 (refd)
R v Mohamed Humayoon Shah (1874) 21 WE 72 (refd)
Ratnasamy v PP [1948] MLJ 161 (distd)
Sussex (Peerage) Case (1844) 11 Cl & Fin 85 (folld)
Tan Peng Ann v PP [1949] MLJ Supp 10 (distd)
Yan Wing Lee v PP 1994 MMD [Jan] 55; [1994] 2 CLJ 453 (refd)

Legislation referred to

Courts of Judicature Act 1964 s 36
Courts Ordinance No 3 of 1946 ss 20, 21, sch 4
Criminal Procedure Code (FMS Cap 6) ss 152–156, 326
Customs Act 1967 s 128(3)
Excise Enactment No 102 (Johore) s 55
Fish Marketing Regulations 1973 reg 4A(3)
Lembaga Kemajuan Ikan Malaysia Act 1971 s 20

Ong Kow Meng (*KM Ong & Co*) for the applicant.
Iskandar Shah bin Ibrahim (Deputy Public Prosecutor) for the respondent.

Abdul Malik Ishak J: This is a revision initiated by the applicant's counsel in regard to the order passed by the magistrate, Magistrates' Court, Johor Bahru, Johor ("the magistrates' court"), wherein the applicant had pleaded guilty to a charge under reg 4A(3) of the Peraturan-Peraturan Pemasaran Ikan 1973 (Fish Marketing Regulations 1973) ('the Peraturan'), punishable under the Lembaga Kemajuan Ikan Malaysia Act 1971 ('the Act'). The magistrates' court duly convicted the applicant and fined him RM2,000 in default six months' imprisonment. The proceeds of sale of 200kg of fish (P2) were forfeited to revenue, while the motor van bearing registration No JCG 3015 (P3) also met with the same fate.

I have since called for the record of proceedings to determine the correctness and legality of the order passed by the magistrates' court and, at the same time, to determine the regularity of the proceedings. Hashim Yeop A Sani J (as he then was) succinctly said in *PP v Kulasingam* [1974] 2 MLJ 26 that:

> The object of revisionary powers of the High Court is to confer upon the High Court a kind of 'paternal or supervisory jurisdiction' in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice.

The main plank of the applicant's counsel's argument is in regard to the jurisdiction of the magistrates' court to hear and dispose of the case. Counsel relies on s 20 of the Act and argues that only the sessions court has the jurisdiction to hear and, consequently, dispose of the case.

It is germane to mention at the outset that in a revisionary capacity, the judge sitting alone is empowered to pry and to go deeper into the whole perspective of the case without being shackled by the matters raised by both parties. By s 326 of the Criminal Procedure Code (FMS Cap 6) ('the CPC'), no party has the right to to be heard in a revision except with the permission of the judge, and the permission if granted, will be in the context of s 36 of the Courts of Judicature Act 1964, which reads as follows:

> Subject to any written law for the time being in force no party shall have any right to be heard before the High Court when exercising its power of revision and supervision:
>
> Provided that no final order shall be made to the prejudice of any person unless the person has had an opportunity of being so heard.

What is abundantly clear in a revision is this: the judge will not make a final order to the prejudice of any party without giving that party an opportunity of being heard. *Yan Wing Lee v PP* [1994] MMD [Jan] 55; [1994] 2 CLJ 453, is the authority for the proposition that any order made by a judge on revision cannot be the subject of an appeal, and the order shall be deemed to be a final order, and is, therefore, subject to the proviso of s 36 of the Courts of Judicature Act 1964.

A Having appraised the law on revision, it is now appropriate to set out the charge which the applicant had to face in the magistrates' court, and it is as follows:

> Bahawa kamu pada 22 Mei 1992, jam lebih kurang 4.30 pagi di pintu masuk tambak Johor dalam Daerah Johor Bahru di dalam kawasan Kawalan
B Pemasaran Ikan mengikut Warta Kerajaan PU(B) 52, tanpa lesen untuk mengimport ikan sebanyak kira-kira 200kg dengan menggunakan motor van No JCG 3015. Dengan ini kamu telah melakukan satu kesalahan di bawah peraturan 4A(3) Peraturan-Peraturan Pemasaran Ikan (Pindaan) 1988 dan boleh dihukum di bawah s 17(1) Akta Lembaga Kemajuan Ikan Malaysia (Pindaan) 1973.

C It is obvious that there is a mistake in regard to the Peraturan and the Act as specified in the charge. The correct Peraturan is Peraturan-Peraturan Pemasaran Ikan 1973 and the correct Act should be Akta Lembaga Kemajuan Ikan Malaysia 1971. There is, therefore, a lack of precision in the charge, a set-back which should not occur at all if the prosecution were
D to be meticulous in their work. A charge properly drafted serves as a notice to the offender of the matter which he is accused of. It must be drafted with clearness and certainty. Prosecuting officers are reminded that they should adhere as closely as possible not only to the wording of the statute, but also be doubly sure as to the name of that statute. The magistrates too
E are advised to see that this is done. All these prerequisites are important if one bears in mind that the charge so framed is an information to the court which is trying the offender: see *R v Mohamed Humayoon Shah* (1874) 21 WR 72 and *PP v Lim Yoo Hock* [1984] 1 MLJ 309. Sections 152–156 of the CPC are the relevant provisions on the form of charges, and if adhered to would lead to smoothness in prosecutions. However, the charge
F in the present form as set out above is not prejudicial to the applicant, unlike the charges in *Tan Peng Ann v PP* [1949] MLJ Supp 10, *Liew Min Poh v PP* [1962] 3 MC 316 and *Khoo Kay Jin v PP* [1964] MLJ 22, where the courts there held that the charges were inadequate and defective as they did not disclose how the deception was practised by the offenders.

G So much for the charge. Now, to the crux of the matter.

Section 20 of the Act is enacted as follows:

> Notwithstanding anything to the contrary in any other written law, a Sessions Court in West Malaysia and the Court of a Magistrate of the First Class in East Malaysia, shall have jurisdiction to try any offence under this Act or
H under any rule made thereunder, and to award full punishment for any such offence.

The learned deputy public prosecutor sought to draw a parallel with *Ratnasamy v PP* [1948] MLJ 161, where the appellant there was convicted for storing 20 quarts, 12 pints and 19 pegs of intoxicating liquor at a place
I other than that specified in his licence, namely, at No 4 Jalan Gunong, Bekok between 3 and 6 December 1947. He was fined RM75 or in default one month RI before the magistrate. It was argued by the appellant on appeal there that the court of a magistrate had no jurisdiction to try the

case, as s 55 of the Excise Enactment No 102 (Johore) (No 9 of 1930 as amended by No 16 of 1931) ('the Enactment') categorically stated that all prosecutions under the Enactment may be had before the court of a magistrate of the first class, which may impose any penalty provided by the Enactment, anything in any other Enactment to the contrary notwithstanding. Unfortunately, the magistrate of the first class was superseded by the district court set up by s 18 and sch 4 of the Courts Ordinance No 3 of 1946, with similar powers to the old court of first class magistrate. By virtue of ss 20 and 21 of the Courts Ordinance No 3 of 1946, the jurisdictional range and powers of punishment of the district court were increased. The learned deputy public prosecutor argued further that Laville J, in delivering the judgment in *Ratnasamy*'s case, laid stress on s 55 of the Enactment, which according to the learned deputy public prosecutor, was in pari materia with s 20 of the Act. His Lordship came to the following conclusions:

> The wording of s 55 of the Excise Enactment is however permissive and not obligatory, and the section was enacted in my view for the purpose of enabling the first class magistrates' court to impose sentences which, owing to its power of punishment being limited, it could not otherwise impose.

Laville J continued further that:

> The powers of s 55 of the Excise Enactment do not however oust the jurisdiction of a magistrate's court where offences under the Enactment fall within it.

Applying *Ratnasamy*'s case, the learned deputy public prosecutor argued that the magistrates' court had jurisdiction to handle the case under the Peraturan, punishable under the Act, since s 20 of the Act is also couched permissively and not obligatorily.

Section 55 of the Enactment is worded as follows:

> All prosecutions under this Enactment may be had before the Court of a Magistrate of the First Class; and such Court may impose any penalty provided by this Enactment, anything in any other Enactment to the contrary notwithstanding.

In comparing the provisions of s 55 of the Enactment with that of s 20 of the Act, the following differences are detected:

(1) s 55 of the Enactment uses the words '... may be had before the Court of a Magistrate of the First Class ...', whilst s 20 of the Act lays emphasis on the words '... a Sessions Court in West Malaysia ... shall have jurisdiction to try any offence under this Act ...'; and

(2) s 55 of the Enactment uses the words '... and such Court may impose any penalty provided by this Enactment ...', whilst s 20 of the Act speaks of '... and to award full punishment for any such offence'.

Laville J was correct in construing the word 'may' in s 55 of the Enactment as permissive. But in the context of s 20 of the Act, the word 'shall'

appearing therein reflects a measure of mandatoriness in it. It is my judgment that only the sessions court is vested with the jurisdiction to hear and dispose of the applicant's case upon a plain reading of s 20 of the Act, for the simple reason that it is only the sessions court that is empowered to award the full punishment for such an offence. The words in s 20 of the Act are so plain and unambiguous that I have no choice but to interpret it as such. As Lord Diplock said: 'Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities ...' (*Duport Steels v Sirs* [1980] 1 All ER 529 at p 541; [1980] 1 WLR 142 at p 157). Even if there is any ambiguity, which is not detectable here, the construction which is in favour of the freedom of the individual should be adopted (*David v De Silva* [1934] AC 106 and *O'Connor v Issacs* [1956] 2 QB 288; [1956] 2 All ER 417; [1956] 3 WLR 172). In my judgment, since the words in s 20 of the Act are themselves precise and unambiguous, then one need not go any further than to expound those words in their ordinary and natural sense. Put in another way, the words themselves alone best declare the intention of the lawgiver: see *Sussex (Peerage) Case* (1844) 11 Cl & Fin 85 at p 143 and *Cargo ex Argos, Gaudet v Brown* (1873) LR 5 PC 134 at p 153.

Parliament in its wisdom has enacted s 20 of the Act by vesting in the sessions court the jurisdiction to hear and dispose of the cases under the Peraturan and the Act, and the courts cannot import words into it as to give it a meaning different from what was intended by Parliament. It is quite normal to determine the intent of the law for the court to look at a sentence from a purely grammatical point of view, so that in construing a statute, the court will disregard a punctuation or will repunctuate it if that be necessary, in order to arrive at the true purpose and natural meaning of the words employed. In the context of the present case, in construing s 20 of the Act, there is no need to disregard a punctuation or to repunctuate it, as the words employed therein are clear and unambiguous. *Ratnasamy*'s case cannot persuade me to hold that the magistrates' court has the necessary jurisdiction to handle the applicant's case. Even the most skillful counsel cannot make bricks without any straw (*Manchester Corp v Connolly* [1970] 1 All ER 961; [1970] 2 WLR 746).

By way of an analogy, the preamended version of s 128(3) of the Customs Act 1967 gave the power to the sessions court judge in West Malaysia or the magistrate of the first class in Sabah and Sarawak to decide, on receipt of a referral by the Director-General, the ownership of the goods seized in respect of which there was no prosecution but claimed in writing within one calendar month from the date of seizure by any person asserting ownership of such goods. But by an amendment in 1990, to be precise, 30 August 1990, vide A783, the substituted s 128(3) of the Customs Act 1967 gave that jurisdiction only to the magistrate of the first class. Must the prosecution still follow the preamended position or the newly amended position when resorting to s 128(3) of the Customs Act 1967? The answer is obvious. The prosecution must follow the newly amended version of s 128(3) of the Customs Act 1967.

For these reasons, the conviction and sentence imposed by the magistrates' court were quashed and an order for the return of RM2,000, if paid, was made. The orders for the forfeiture of (P2) and (P3) were set aside and the case was transferred to the Sessions Court, Johor Bahru for disposal. 21 December 1994 was fixed as the mention date before the Sessions Court, Johor Bahru.

Order accordingly.

Reported by Isabel Liong